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04-30-07

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 06-05-027
(Filed May 25, 2006)

Order Instituting Rulemaking to Implement the California Renewables Portfolio Standard Program.

Rulemaking 04-04-026
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING ON
PACIFIC GAS AND ELECTRIC COMPANY'S
MOTIONS TO FILE DATA UNDER SEAL**

Summary

This ruling disposes of various motions filed by Pacific Gas and Electric Company (PG&E) in this proceeding and its predecessor proceeding, Rulemaking (R.) 04-04-026, for confidential treatment of data related to the Commission's Renewables Portfolio Standard (RPS) program. No party opposes the motions. I discuss the motions individually below.

1. PG&E's 4/3/07 Motion

PG&E's 4/3/07 motion seeks confidential protection in accordance with Decision (D.) 06-06-066 (issued in the Commission's "Confidentiality OIR" proceeding, R.05-06-040) of data from PG&E's RPS Periodic Compliance Report filed on April 3, 2007. PG&E attaches a table¹ to its motion that itemizes how each item meets the requirements of D.06-06-066, which requires that an investor

¹ Identification of Confidential Information Per Decision 06-06-066.

owned utility (IOU) seeking confidentiality protection prove five grounds for such protection:

1. That the material it is submitting constitutes a particular type of data listed in the Matrix, appended as Appendix 1 to D.06-06-066,²
2. Which category or categories in the Matrix the data correspond to,
3. That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
4. That the information is not already public, and
5. That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

PG&E redacts three types of data: 1) forecasts, 2) information about RPS contracts under negotiation, and 3) expired RPS contract data. For each redaction, it sets forth items 1-3 above. It states generally that the data is not already public and cannot be further aggregated.

Generally speaking, PG&E claims its forecast data is confidential because releasing it would allow others to calculate its forecasted RPS “net short” (the difference between the amount of renewable energy it must procure and the amount it has available from all sources). Matrix Section V-C (“LSE Total Energy Forecast - Bundled Customer”) protects such data. I agree.

I also agree with PG&E that the second category of data (contacts under negotiation) is appropriately categorized. The Matrix requires release of RPS contract summary data, but not of negotiations, which PG&E appropriately

categorizes as confidential under Section VII (“Score sheets, analyses, evaluations of proposed RPS projects”).

However, PG&E’s designation for the third category (expiring contracts) is not proper. PG&E argues that Pub. Util. Code § 454.5(g) protects such information, and also that Matrix Section IV-B (“Forecast of QF³ Generation”) covers the information. D.06-06-066 prohibits a utility from claiming confidential treatment of data *covered in the Matrix* for reasons other set forth in the Matrix: “Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. . . . Unless and until we change or repeal General Order (GO) 66-C (or opt to leave it intact upon examination), it shall continue to apply to data *not* addressed in the Matrix.”⁴ Thus, I deny this aspect of PG&E’s motion.

Further, Matrix Section IV-B is not an RPS provision at all. In keeping with D.06-06-066’s approach to release as much information on RPS as possible, I construe the Matrix narrowly, and deny PG&E’s motion regarding expiring contracts.⁵ PG&E shall produce the redacted information to the service list and any other party on which it is required to serve its RPS compliance filings within 15 days of this ruling.

As for the information I agree is confidential, parties who are “non-market participants” (as explained in D.06-12-030) may have access to the

² The “IOU Matrix” sets forth a variety of utility forecast and historical data related to its procurement of energy that the Commission has deemed confidential.

³ Qualifying Facility.

⁴ D.06-06-066, ordering paras. 2 & 4.

⁵ *Identification of Confidential Information Per Decision 06-06-066*, cell 22.

data pursuant to a protective order and/or nondisclosure agreement satisfactory to the parties. "Market participants" (also as defined in D.06-12-030) may also have access to the confidential data, but only under the circumstances set forth in D.06-12-030. If PG&E receives requests for the confidential data, it shall produce it in accordance with those decisions.

2. PG&E's 5/22/06 Motion

PG&E's 5/22/06 motion, filed before the Commission issued D.06-06-066, seeks protection for a variety of RPS information it presented during an *ex parte* meeting with Commissioner Chong's advisor. PG&E says the material summarizes the supply of renewable resources that responded to PG&E's 2005 RPS solicitation, including volume, price, technology and on-line date, and summarizes the gigawatt hours represented by contracts PG&E has signed to meet its 2005 requirements. When PG&E filed its motion, the 2005 solicitation was still underway.

PG&E asserts that the information is confidential market sensitive information pursuant to Pub. Util. Code § 454.5(g). Due to the passage of time, I do not find that the material should continue to be confidential. I thus deny PG&E's motion. If it wishes to assert a right to continued confidentiality under D.06-06-066, PG&E shall file a new motion within 15 days of this ruling. Otherwise, PG&E shall produce the redacted information (or a notice of availability thereof) to the service list and any other party on which it is required to serve its RPS compliance filings, within 15 days of this ruling.

3. PG&E's 5/18/06 Motion

PG&E's 5/18/06 motion covers material given to former Commissioner Brown's advisors during an *ex parte* meeting. The material is similar to, although not identical to, the material contained in PG&E's 5/22/06

motion, discussed above. For the same reasons as I set forth with regard to that motion, within 15 days of this ruling, PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

4. PG&E's 5/16/06 Motion

PG&E's 5/16/06 motion covers the same information as the 5/18/06 motion, except that PG&E showed the material to Commissioner Bohn's advisor. For the same reasons as I set forth with regard to the 5/22/06 motion above, within 15 days of this ruling, PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

5. PG&E's 5/15/06 Motion

I ruled on PG&E's 5/15/06 motion by ruling filed May 23, 2006. The ruling preliminarily granted PG&E's motion for confidential treatment of information from PG&E's 2005 RPS solicitation. However, the ruling noted that "[t]his ruling with respect to the treatment of confidential information . . . may be altered to conform to the Commission's upcoming decision in Rulemaking (R.) 05-06-040." Ruling p. 2. Now that the Commission has issued D.06-06-066, within 15 days of this ruling PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

6. PG&E's 5/8/06 Motion

PG&E's 5/8/06 motion covers nearly the same information as the 5/18/06 and 5/22/06 motions, except that PG&E showed the information to "certain Commissioners and their staff." For the same reasons as I set forth with regard to the 5/22/06 motion above, within 15 days of this ruling, PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

7. PG&E's 2/27/06 Motion

The 2/27/06 motion seeks to keep confidential portions of PG&E's RPS 2006 Renewable Energy Procurement Plan, filed on 12/22/05, and revised concurrent with the filing of the motion. The affected information is PG&E's "quantitative assessment of near term market potential." Now that 2006 is over, I do not believe this assessment is confidential, and I deny the motion without prejudice. Within 15 days of this ruling, PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

8. PG&E's 12/22/05 Motion

The 12/22/05 motion relates to an earlier version of the material discussed in the 2/27/06 motion, and I reach the same conclusion that it is no longer confidential. Within 15 days of this ruling, PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

9. PG&E's 12/7/05 Motion

PG&E's 12/7/05 motion seeks to protect information PG&E's filed with its 2005 RPS Plan to achieve goals during the 2005-2014 period. It analyzes the "likelihood of development of PG&E's preferred renewable resources by 2010 . . . in a quantitative manner." Certain information in Sections B and D contain specific procurement volumes, timing of resources availability and estimates of supplies. Given that this information was assembled in 2005, it is now stale in my judgment and no longer deserves confidential protection. I therefore deny PG&E's motion without prejudice. Within 15 days of this ruling, PG&E shall either produce the information, or file a motion seeking continued confidentiality under D.06-06-066.

10. PG&E's 10/10/06 Motion

PG&E's 10/10/06 Motion seeks confidentiality for three slides from PG&E's *ex parte* presentation to Commissioner Peevey's advisor entitled "RPS Program: Penalties or Progress?" Slide 3 contains the "gigawatt hours (GWh) of deliveries and percent of target provided by pending offers received in 2005 RPS and total percent of target achieved during all solicitation years." This type of information is not addressed in the Matrix to D.06-06-066, so PG&E seeks protection pursuant to Pub. Util. Code § 583 and GO 66-C. Slides 6 and 8 contain the results of PG&E's evaluation of proposed RPS projects, which is arguably covered by IOU Matrix Section VII, "Score sheets, analyses, evaluations of proposed RPS projects."

PG&E explains at length why Slide 3 is confidential pursuant to § 583 and GO 66-C, and I grant its motion subject to the condition below. In summary, PG&E's claim is that disclosure of the sum of offers under negotiation would provide insight into PG&E's bargaining position and could adversely affect the terms and conditions of PG&E's transactions with 2006 bidders. PG&E may maintain confidentiality for one year from the date of this ruling, and thereafter shall make the information public. The condition on this ruling is as follows: If PG&E no longer believes it needs confidential treatment because the information is now stale, it shall produce the information (or a notice of availability thereof) within 15 days of this ruling to the service list for this proceeding.

PG&E seeks confidentiality for Slides 6 and 8 in part based on IOU Matrix Section VII, but it concedes that the information is not "specifically identified in Appendix 1 of D.06-06-066." (Appendix 1 is the "IOU Matrix.") The information in the slides consists of estimates of deliveries based upon assumed deliveries from projects tendered in PG&E's 2006 RPS solicitation and under

negotiation. The delivery volumes are derived from offers that PG&E has analyzed and found to have potential benefit for its customers, so it believes the “score sheets, analyses, evaluations of proposed RPS projects” in the category renders the information confidential. PG&E states it has not previously disclosed this information and that it cannot be aggregated, summarized or masked in a manner that would allow partial disclosure yet still convey the significance of the planned deliveries.

Had the Commission intended to keep this kind of forecast data confidential, it would have done so in the Matrix. Indeed, the IOUs devised the Matrix categories, and could have included one for RPS forecasts. This information is not “score sheets, analyses or evaluation of proposed RPS projects”; that category clearly covered evaluations of individual RPS bids or the viability of the bids as a package. Thus, I conclude that the general principle in D.06-06-066 favoring maximum disclosure of RPS information requires PG&E to disclose the information in Slides 6 and 8. It shall do so within 15 days of this ruling by serving the information (or notice of availability) on the service list for this proceeding.

11. PG&E's 10/6/06 Motion

Like the 10/10/06 motion, PG&E's 10/6/06 motion relates to Slides 3 and 6 from its “RPS Program: Penalties or Progress” presentation to Commissioner advisors. PG&E shall be bound by the rulings on its 10/10/06 motion (above) as to these slides.

12. PG&E's 9/29/06 Motion

Like the 10/10/06 motion, PG&E's 10/29/06 motion relates to Slides 3 and 6 from its “RPS Program: Penalties or Progress” presentation to

Commissioner advisors. PG&E shall be bound by the rulings on its 10/10/06 motion (above) as to these slides.

13. PG&E's 9/26/06 Motion

PG&E's 9/26/06 motion relates to its four categories of information filed with its 2007 RPS Plan.

PG&E contends the first category of data, its forecast of retail sales contained in the Plan, is protected by D.06-06-066 under Section IV(C) of the IOU Matrix. That section covers "LSE⁶ Total Energy Forecast - Bundled Customer." PG&E states that its forecast of retail sales is precisely the amount of energy needed to serve bundled customer load, and this meets the Matrix exactly. It only protects the information for the years addressed in the Matrix ("the front three years of forecast data" or 2007-2010); it has never made this information public; and the information cannot be aggregated, redacted, summarized or masked. I grant PG&E's motion, as it is in conformity with D.06-06-066.

The second data category is PG&E's Incremental Procurement Target (IPT). PG&E contends this data also reveals its retail sales forecast, because IPT is 1% of retail sales and easy multiplication would reveal the retail sales forecast. I agree, and grant PG&E's motion on the grounds that I have granted Southern California Edison's motion regarding the same information,⁷ and also on the grounds discussed in the previous paragraph.

The third category of data is PG&E's Annual Procurement Target (APT). APT is tied to the 1% IPT target, so multiplying by 100 would give the

⁶ Load Serving Entity, such as PG&E.

⁷ *Administrative Law Judge's Ruling on Southern California Edison's Motions to File Data Under Seal.*

retail sales forecast, according to PG&E. For the same reasons as I give with regard to IPT, I grant PG&E's request.

The final category is PG&E's Baseline Procurement Target, which PG&E construes to be the same as its APT. For the same reasons I give for IPT and APT, I grant PG&E's motion.⁸

As to all four categories of data, however, PG&E is nonetheless required to make confidential information available to certain non-market participants and market participants in accordance with the terms of D.06-06-066 and D.06-12-030, discussed above in connection with PG&E's 4/3/07 motion. If PG&E receives requests for the confidential data, it shall produce it in accordance with those decisions.

14. PG&E's 8/1/06 Motion

PG&E's 8/1/06 motion relates to information in its August 1, 2006 Compliance filing of PG&E Reporting Progress Toward Achievement of Annual Procurement Target for Renewable Generation Pursuant to Renewable Portfolio Standard (Report), which includes a Project Development and Monitoring Status Report (Project Status Report) that gives project-specific information about the progress toward completion of various renewables projects. PG&E states that it has been advised by developers that they consider this project milestone information to be confidential.

I address a similar motion in my *Administrative Law Judge's Ruling on San Diego Gas and Electric's Motions to File Data Under Seal*, and reach the same

⁸ PG&E contends the IPT, APT and Baseline information has never been made public, and cannot be aggregated. These are essential elements to its confidentiality claim.

result here. In that ruling, I state that D.06-06-066 does not allow confidential treatment of this data:

This information is insufficient to meet SDG&E's burden of proving that its information deserves confidentiality protection under D.06-06-066 and the accompanying Matrix. Matrix Section VII(G) states that RPS contract summaries shall be public. All of the confidential documents are RPS contract summaries. Indeed, Southern California Edison produced all such summaries in this proceeding.

Both SDG&E and PG&E also claim the information is confidential pursuant to Pub. Util. Code § 583 and GO 66-C. This claim is unfounded, as I state in the SDG&E ruling:

SDG&E also seeks protection for the same data under Pub. Util. Code § 454.5(g) and GO 66-C. It asserts release of the subject data would put it at an "unfair business disadvantage" if released. However, D.06-06-066 prohibits a utility from claiming confidential treatment of data covered in the Matrix for reasons other than those set forth in the Matrix: "Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. . . . Unless and until we change or repeal General Order (GO) 66-C (or opt to leave it intact upon examination), it shall continue to apply to data *not* addressed in the Matrix."⁹

I therefore deny PG&E's motion. PG&E shall produce the redacted information to the service list and any party on which it is required to serve the Report and Project Status Report within 15 days of this ruling.

⁹ D.06-06-066, ordering paras. 2 & 4.

15. PG&E's 7/14/06 Motion

PG&E's 7/14/06 motion seeks confidential treatment of Advice Letter No. 2860-E, which contains the following three Appendices:

Appendix A - Power Purchase Agreement and Confirmation Letter

Appendix B - SEP/MPR worksheet

Appendix C - Contract Summary - Confidential Terms and Conditions

In Appendix A, PG&E seeks to keep a Master Power Purchase Agreement with Military Pass Road-Newberry Volcano LLC and PG&E confidential. It has made contract summary information available pursuant to the D.06-06-066 Matrix, but claims the rest of the contract should be confidential pursuant to Matrix Section VII - "Bilateral Contract Terms and Conditions - Electric (F) Renewable Resource Contracts under RPS Program - Contracts With Supplemental Energy Payments." PG&E states the contract has not been made public, and that the contract terms cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

It is true that a utility may file RPS contracts under seal if they have provided contract summaries. Thus, I grant PG&E's motion.

In Appendix B, PG&E seeks to protect a California Energy Commission SEP¹⁰ Worksheet, which contains contract and bid price in annual, weighted average, levelized and time-of-delivery adjusted formats, in various combinations. It claims this data matches Matrix Section VII - "Bilateral Contract Terms and Conditions - Electric (F) Renewable Resource Contracts under RPS Program - Contracts With Supplemental Energy Payments." PG&E states that price information in RPS contracts should be confidential. It states that the

information is not already public, and that the contract terms cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

I agree that this information contains contract terms and conditions and is thereby covered by the Matrix.

With regard to Appendix C, PG&E asks that contract summary information be confidential. It claims the summary information is not the type of information the Matrix requires to be public. This strained interpretation of the D.06-06-066 Matrix is precisely what the decision attempted to prevent when it held that RPS information was to be public to the maximum extent possible. Only information that precisely matches the Matrix should be confidential. PG&E shall disclose this information within 15 days of this ruling by serving the information (or notice of availability) on the service list for this proceeding.

As to all data I find to be confidential, PG&E is nonetheless required to make confidential information available to certain non-market participants and market participants in accordance with the terms of D.06-06-066 and D.06-12-030, discussed above in connection with PG&E's 4/3/07 motion. If PG&E receives requests for the confidential data, it shall produce it in accordance with those decisions.

IT IS RULED THAT:

1. Pacific Gas and Electric Company (PG&E) shall comply with this ruling by either serving information I find not confidential (or a notice of availability) on the service list for this proceeding and the parties on whom it was required to

¹⁰ Supplemental Energy Payments.

serve the information that is the subject of each motion, or, where specified, file a new or revised motion addressing the deficiencies discussed in connection with each motion. PG&E shall take either action within 15 days of this ruling.

2. Where I rule that information is confidential, PG&E shall produce it, upon request, to non-market participants and market participants, as defined in Decision (D.) 06-12-030, according to the procedures set forth in that decision.

3. In all future filings, PG&E shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the Matrix. This should make the task of ruling on future motions easier.

Dated April 30, 2007, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability is current as of today's date.

Dated April 30, 2007, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
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